

LCRO 11/08

**CONCERNING** An application for review pursuant to  
Section 193 of the Lawyers and  
Conveyancers Act 2006

**AND**

**CONCERNING** A determination of the Auckland  
Standards Committee No 3

**BETWEEN** **CLIENTS X** of Auckland

Applicant

**AND** **LAWYER B** of Auckland

Respondent

## **DECISION**

### **Background**

[1] Clients X have sought a review of a decision by Standards Committee 3 on a complaint of delay by their former solicitor, Lawyer B. The Standards Committee determined that the complaint about delay had been previously considered and disposed of, and for that reason no further action on the matter was required. Section 351(2)(a) of the Lawyers and Conveyancers Act does not allow a further complaint to be made in respect of a matter that has already been disposed of under the Law Practitioners Act 1982.

Client X disagrees with the Standards Committee decision as he does not agree that the complaint about delay has been previously considered.

My review has considered the file of the Standards Committee and the additional correspondence provided by Client X for the purpose of this review.

### **The evidence**

[2] Clients X first complained to the Auckland District Law Society (ADLS) on 21 July 2008. The Auckland District Law Society forwarded their complaint to Lawyer B on 23 July 2008 with a request for a formal response.

[3] A second complaint by Clients X was made the following month and was forwarded to Lawyer B on 26 August. He was also asked to respond to this complaint.

[4] It needs to be noted that between the first and second complaints the law that governs the conduct of lawyers had changed. The first complaint was made under the former Law Practitioners Act. The second was made under the recent Lawyers and Conveyancers Act that commenced on 1 August 2008.

[5] On 11 September the New Zealand Law Society (NZLS) wrote to Clients X and referring to their second complaint, asked them to provide further information if they considered that this complaint was different from that which was currently under ADLS consideration. On 15 September Clients X responded that the original complaint was about how their file had been handled whereas the second complaint was about excessive delays. They did however acknowledge that a "*small part*" of the original complaint was about delay.

[6] Meanwhile Lawyer B forwarded to ADLS a written response to the first complaint. His report is dated 12 September 2008. On this same date Lawyer B wrote a second letter addressed to the NZLS in reply to its 26 August request for a report on the second complaint. He wrote "*Clients X have made an identical complaint, dated 23 July to the Auckland District Law Society. We have responded to that complaint.*" Clients X were sent a copy of Lawyer B's 12 September report. There is nothing to suggest that they received the second letter that Lawyer B had written on the same day.

[7] On 16 September Lawyer B was informed by the NZLS about client X's 15 September email (see previous paragraph) wherein they had disagreed that the second complaint was the same as the first, and he was asked to respond. Lawyer B replied on 21 October, that he did "*not agree that the complaint of delay is, or should be regarded as separate and distinct from the complaint to the ADLS. This is because the complainants' complaint to the ADLS included a complaint of delay.*" He also noted that the matter was due to be placed before the Complaints Committee on 11 November 2008.

### **Evaluating the evidence**

[8] One particular and usual feature of this review is that the two complaints made by Clients X straddled two jurisdictions. The first complaint fell to be considered by the Complaints Committee under the former Law Practitioners Act. This Committee had no jurisdiction to consider complaints filed under the Lawyers and Conveyancers Act that commenced on 1 August 2008. The second complaint was made after the Lawyers and Conveyancers Act had commenced, and was therefore required to be considered by a Standards Committee under that Act. This transitional situation may have created some confusion.

[9] My review of the Standard Committee's decision has focused on the question of whether the complaint about delay was addressed as part of the original investigation and decision of the former Complaints Committee. Clients X accept that they did raise delay in their original complaint when they included a complaint that their lawyer had ignored their pleas to "*get on with our case*". But it seems that they considered this to be incidental to the other heads of complaint. The second complaint focused solely on the matter of delay, that Lawyer B had failed to "*start the case*" and "*get on with our job as he had promised.*" The Standards Committee considered that the second complaint was substantively the same as that included in the original complaint. In my view it is somewhat difficult to see that there is any material difference in the substance of the complaints.

[10] I noted that the ADLS decision that was sent to Clients X following the Committee's meeting on 11 November did not make any reference to the second complaint, and there were additional communications to them that suggested that their second complaint would be separately investigated. One example is the email sent to them on 11 November 2008 from Mr xxx to say that the Complaints Committee would meet that day to consider their "*first complaint*" and that their second complaint was a '*separate matter*' yet to be considered. This correspondence may have led the client Xs' to conclude that the second complaint was a separate matter and one that was yet to be investigated. This was basically correct insofar as the second complaint had arisen under the jurisdiction of the new Act, and was therefore being processed via a different procedural pathway. The second complaint could only be addressed by the Standards Committee under the new Act as a complaint separate from the first complaint made under the earlier Act. There is no information indicating that Clients X were aware of how the transitional situation might impact on their complaints. However, this jurisdictional separation did not prevent the Standards Committee from

considering whether the substance of the complaint had been previously considered and disposed of.

[11] In this case the Standards Committee's task was to consider whether the substantive complaint of delay had been previously disposed of and it concluded that it had. In my view this decision was correct.

[12] I anticipate that Clients X may not agree with this outcome. It may therefore be helpful if I were to explain that the outcome would not be any different even if I had taken a different view of this matter. That is because the conduct complained of occurred prior to the commencement of the recent Lawyers and Conveyancers Act. In these circumstances the provisions of the former Law Practitioners Act continue to apply to assessing the complaint. Had a separate investigation been conducted the conduct complained of would have needed to reach a threshold that would have justified the commencement of disciplinary proceedings against the lawyer under the Law Practitioners Act. This is reflected in the provisions of section 351(1) of the Lawyers and Conveyancers Act which allows for complaints to be made about conduct occurring prior to the commencement of this Act only in respect of conduct that could have led to disciplinary proceedings against the law practitioner. The conduct complained of in this case could not have led to disciplinary proceedings, and would therefore, in any event, have resulted in the Standards Committee deciding to take no further action.

### **Decision**

[13] Pursuant to section 211(1)(a) of the Lawyers and Conveyancers Act I confirm the decision of the Standards Committee.

**DATED** this 26<sup>th</sup> day of March 2009

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Hanneke Bouchier  
**Legal Complaints Review Officer**

In accordance with s 213 of the Lawyers and Conveyancers Act this decision is to be provided to:

Clients X as the applicants

Lawyer B as respondent

The Auckland Standards Committee 3

The New Zealand Law Society